

REMARKS

Claims 12, 15-22, and 24-28 are currently pending in this application. In view of the above Amendments and the following Remarks, Applicants respectfully request reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

Rejections Under 35 U.S.C. § 102

Claims 12, 15-22, and 24-28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 6,679,250 issued to Walker, *et al.* ("Walker"). Applicants respectfully traverse this rejection for at least the following reasons.

35 U.S.C. § 102(b) recites:

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States

As Walker issued on January 20, 2004 and the present application was filed on March 18, 2004, Applicants respectfully submit that the 35 U.S.C. § 102(b) rejection is improper and must be withdrawn. In addition, Applicants request that the next Office Action be made non-final due to this improper rejection.

Applicants anticipate that the Examiner may reject claims 12, 15-22, and 24-28 under 35 U.S.C. § 102(e) as being anticipated by Walker. Applicants respectfully traverse this rejection for at least the following reasons.

A claim may be properly rejected under 35 U.S.C. § 102(e) if, and only if, a single prior art reference discloses each and every feature of the invention as recited in the claim. If the rejected claim recites even one feature that is not disclosed by the prior art reference, the 35 U.S.C. § 102(e) rejection is improper and must be withdrawn. In this case, the rejection of claim

12 must be withdrawn because Walker fails to disclose at least one feature recited in the independent claim.

Claim 12 recites, among other things:

A drug delivery mouthpiece, comprising: a hollow body having a top and a bottom; a connection port proximate the bottom of the hollow body; a vent proximate the top of the hollow body configured to receive ambient air upon a patient's inhalation; a nebulizer inlet and a nebulizer outlet proximate the bottom of the hollow body...

Broadly, Walker teaches an apparatus that includes an integral nebulizer whereas the invention is designed to function with a separate and external nebulization system. Moreover, Walker relies on a pump 30 to provide an air source to the apparatus.

Specifically, Walker does not disclose a vent proximate the top of the hollow body configured to receive ambient air upon the patient's inhalation. There is no place where ambient air may enter Walker's apparatus. Air is pumped in via a pump 30 through the distribution cap 28 at the bottom of the device. Inhalation by the patient serves only to open the valve 20 and draw vaporized medication into the chamber 10, not move ambient air into the device.

Furthermore, Walker does not teach a nebulizer inlet and a nebulizer outlet that are both proximate the bottom of the hollow body. The hollow chamber may be thought of as Walker's chamber 10, the container 25, or both. The nebulizer inlet is at the bottom of the container 25, and the nebulizer outlet is the valve 20, which is located at the top of the container 25 and the bottom of the chamber 10. With this arrangement, the inlet and the outlet are not both proximate to the bottom of the hollow body as taught by Walker.

Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection of claim 12. Since none of the other prior art of record discloses or suggests all the features of the claimed invention, Applicant respectfully submits that independent claim 12 and all the claims that depend therefrom are allowable.

With regard to dependent claims 15-22 and 24-28, Applicants assert that these claims are allowable on their own merit and at least because they depend on independent claim 12, which Applicants submit has been shown to be allowable.

CONCLUSION

Applicant submits that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is thus respectfully requested to pass the above application to issue.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicant's undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested. Applicant respectfully requests that a timely Notice of Allowance be issued for this application.

Respectfully submitted,



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Date: October 5, 2007

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